



U.S. SMALL BUSINESS ADMINISTRATION
Washington Metropolitan Area District Office
1110 Vermont Avenue, N.W., 9th Floor
Post Office Box 34500
Washington, D.C. 20043-4500
(202) 606-4000

Please read the enclosed 8(a) Fact Sheet for general information and eligibility requirements. Note that an applicant concern must demonstrate that it has been in business for two full years prior to the date of its 8(a) application by submitting income tax returns showing revenues for each of the two previous years (13 CFR Part 124.017). Consideration may be given under certain circumstances for waiver of the minimum period of operation.

The enclosed 8(a) program application package includes some of the following and can be found in the On Line Library and can be found in forms. Just look for number form you are seeking.

The 8(a) program application package includes the following.

<http://www.sba.gov/sbaforms/sba413.pdf> (2 COPIES)

<http://www.sba.gov/sbaforms/sba912.pdf> (2 COPIES)

<http://www.sba.gov/sbaforms/sba1010.pdf> (1 COPY) (application for 8(a) Certificate

<http://www.sba.gov/sbaforms/sba1623.pdf> (2 COPIES)

<http://www.sba.gov/sbaforms/f4506.pdf> (1 COPY)

SBA also requires other documents to establish the eligibility of your business for 8(a) program participation. Please refer to the checklist contained in SBA Form 1010.

The 8(a) program eligibility criteria are contained in the Code of Federal Regulations (CFR), Title 13, Part 124; small business size criteria are in Part 121. I urge you to review this material prior to preparing your application. The regulations are available in most public or university libraries or online at <http://www.sba.gov/regulations/amendments/121-124-134amendment.html>

Current 8(a) program regulations require that all applications be accurately prepared, typed or legibly printed, and submitted in completed form. Applications that are incomplete, illegible or contain inaccurate or inconsistent information will be returned without processing; therefore it is imperative that you prepare both the application and supporting documents carefully. Upon completion, 8(a) applications must be sent to:

U.S. SMALL BUSINESS ADMINISTRATION
Attention: DPCE
ROBERT N.C. NIX FEDERAL BUILDING
900 MARKET STREET, 5TH FLOOR
PHILADELPHIA, PA 19107



U. S. SMALL BUSINESS ADMINISTRATION
WASHINGTON METROPOLITAN AREA DISTRICT OFFICE
1110 VERMONT AVENUE, NW. 9TH FLOOR
WASHINGTON, DC 20043-4500
202-606-4000 . 202-606-4225 (FAX)

SBA 8(a) "QUICK CHECK"

1. Are YOU and any other individual claiming disadvantaged Status as a U.S. citizen?
YES _____ NO _____
2. Have you been discriminated against in the U.S.? _ YES _ NO
3. Is your personal net worth under \$250,000? _ YES _ NO (excluding residence and business)
4. In general, has your legal record been favorable? _ YES _ NO
5. Currently are you or your firm responsible for any tax liens or unsatisfied judgements?
__ YES _____ NO
6. Do you unconditionally own 51% of the firm applying for the 8(a) program? _ YES _ NO
7. Is this your only employment and/or business ownership? _ YES _ NO
8. Do you have ultimate managerial accountability for the business? _ YES _ NO
9. Can you sign company checks? _ YES _ NO
10. Do you maintain the highest position in the firm? _ YES _ NO
11. Has your firm filed Federal business tax returns for the last 2 years reflecting revenues in the industry in which your firm seeks 8(a) certification? _ YES _ NO
12. Are you the highest compensated individual in the firm? _ YES _ NO
13. Is your firm a small business? _ YES _ NO
14. Is your firm current in its payment of operating expenses? _ YES _ NO

15. Is your firm current in its payment of payroll taxes? ☐ YES ☐ NO

16. Is your firm a for-profit business? ☐ YES ☐ NO

17. Does the Federal government purchase the goods/services offered by your firm? ☐ YES ☐ NO

18. If your firm sells a product, does it maintain inventory and sell to customers from that inventory?
☐ YES ☐ NO

19. In your business career, you affirm that you have never been debarred from doing business with the Federal government. ☐ YES ☐ NO

If you responded "YES" to all of the above questions, you/your firm are good candidates for the 8(a) Business Development program. Contact Eugene Sawney located at the SBA's Washington District Office on (202) 606-4000, x306 for additional information and details on how to apply and complete your application.

As part of your application, you will be required to complete SBA forms and submit relevant personal and business documentation to allow SBA to assist you in reviewing your business operations and eligibility for the 8(a) Business Development program.

The above "Quick Check" questions should be used as a guide to assist you in determining your prospects for eligibility in the 8(a) program. It is not an official SBA 8(a) application or a substitute for your formal application.



Washington Metropolitan Area District Office *Section 8(a) Business Development Program*

THE MOST FREQUENTLY ASKED QUESTIONS ABOUT THE 8(a) BUSINESS DEVELOPMENT PROGRAM

1. What is the 8(a) Business Development (BD) Program?

The SBA's 8(a) BD Program, named for a section of the Small Business Act, is a business development initiative that helps socially and economically disadvantaged American citizens gain access to the economic mainstream.

As part of the business development of the 8(a) firms, SBA helps small disadvantaged businesses compete for Federal contracts. By law, the SBA must function as an intermediary for 8(a) contracts, but can delegate its authority through special agreements.

2. How do I apply to the 8(a) BD program?

The first step in seeking certification with the program is to contact the local SBA district office serving your area. An SBA representative will answer general questions over the telephone. Some district offices may also have 8(a) orientation workshops to provide additional information regarding the eligibility requirements and to review various SBA forms.

3. What are the basic requirements an 8(a) applicant firm must meet?

The applicant firm:

- must be a small business;
- must be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States; and
- must demonstrate potential for success.

4. Will having a specific business consultant prepare my 8(a) application increase my chances of being approved?

You do not need to pay anyone to prepare your 8(a) application. SBA designed the application forms so the applicant can complete the application. However, a consultant can assist in completing the application. Please be advised that no one can guarantee that an application-for 8(a) program participation will be approved. The application process intended to assure that each applicant receives a fair, unbiased review, free from favoritism and influence. Any irregularities in the application review process should be immediately referred to the SBA Inspector General.

5. What is SBA's definition of a small business?

SBA defines a small business as one that is independently owned and operated and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding 12-months or on sales volume averaged over a three-year period. Examples of SBA general size standards include the following:

- Manufacturing: Maximum number of employees may range from 500 to 1500, depending on the type of product manufactured;
- Wholesaling: Maximum number of employees may not exceed 100;
- Services: Annual receipts may not exceed \$2.5 to \$27.5 million, depending on the particular service being provided;

- Retailing: Annual receipts may not exceed \$5.0 to \$21.0 million, depending on the particular product being provided;
- General and Heavy Construction: General construction annual receipts may not exceed \$13.5 to \$17 million, depending on the type of construction;
- Special Trade Construction: Annual receipts may not exceed \$7 million; and
- Agriculture: Annual receipts may not exceed \$0.5 to \$5.0 million, depending on the agricultural product.

6. What is a Standard Industrial Classification (SIC) code?

A SIC code is the Standard Industrial Classification number listed in the Standard Industrial Classification Manual which is published by the Office of Management and Budget. The SIC Manual is available at your local library or on the Internet site "<http://www.osha.gov/oshstats>." SIC codes are used by the Federal Government to identify and classify specific categories of business activity that represent the primary line of business of a firm. SBA size standards are based on SIC codes.

7. Who are socially disadvantaged individuals?

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control. In the absence of evidence to the contrary, the following individuals are presumed to be socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, and Native Hawaiians); Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands [Republic of Palau], Commonwealth of the Northern Mariana Islands, Laos, Cambodia [Kampuchea], Taiwan; Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru; Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by the SBA.

8. Can an individual who is not a member of a designated group claim social disadvantage?

Yes. However, an individual who is not a member of a designated group must establish social disadvantage on the basis of a preponderance of the evidence. Generally, a preponderance is evidence of a quality and quantity which leads the decision maker to objectively conclude that the existence or truth of the fact(s) asserted is more probable than not.

9. What evidence must an individual who is not a designated group member provide to show social disadvantage?

Evidence of individual social disadvantage must include the following elements:

- At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged.
- Personal experiences of social disadvantage stemming from the objective distinguishing feature or features set forth in the preceding paragraph. The experiences must have been in American society, not in other countries, and must have been substantial, chronic, and long-standing.
- The applicant must have experienced a negative impact on entry into or advancement in the business world because of the disadvantage.

SBA will consider any relevant evidence in assessing these elements. In every case, however, SBA will consider education, employment and business history to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world. Documentation will be required to support the claims of social disadvantage. The following types of evidence can be used to assist in meeting the burden of proof:

Court or administrative findings of discrimination.

Statements made under oath to an investigator or in a court or administrative proceeding.

Affidavits or statements sworn under oath by an individual owner which have specific recurrent incidents of discrimination or a pattern of discrimination over a significant period of time. Applicant statements alone, without supporting or corroborating evidence will be given less weight than if corroborated.

Sworn affidavits or statements from independent third parties who do not have an interest in or close relationship to the owner, corroborating or supporting assertions made by the owner.

Statements by relatives or friends of the owner will have less weight than statements by independent third parties.

Documentary evidence which corroborates or supports assertions made by an owner regarding specific incidents or a pattern of discrimination. Such documentation could include such items as:

- Personnel records
- Payroll records
- Rejection letters on job applications
- Denials of credit applications
- Documents relating to rejected contract offers, i.e., bid abstracts, solicitations, etc.
- Contemporaneous records memorializing meetings, conversations, negotiations, telephone calls, etc.
- Documents setting forth company policy(ies) which are alleged to be discriminatory.

Evidence which tends to show generalized patterns of discrimination against a non-designated group, or statistical data showing that businesses owned by specific non-designated group are disproportionately underrepresented in a particular industry may be used to augment an individual's case. Statistics and generalized patterns are not sufficient by themselves to establish a case of social disadvantage. However, an individual's statement of personal experiences in combination with the generalized evidence may be sufficient to demonstrate social disadvantage.

10. What does it mean to be economically disadvantaged?

Economically disadvantaged individuals are socially disadvantaged individuals whose abilities to compete in the free enterprise system have been impaired due to diminished capital and credit opportunities.

11. What factors are considered when SBA evaluates the economic disadvantage of an individual

The individual's net worth, after excluding the individual's equity in the firm and the equity in the primary residence, may not exceed \$250,000. SBA, however, will also consider the individual's average two year income, fair market value of all assets, access to credit and capital, and the financial condition of the applicant firm in evaluating economic disadvantage.

12. When evaluating economic disadvantage, does SBA include assets that an individual claiming disadvantaged has recently transferred to another individual?

SBA will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust which an immediate family member is a beneficiary, for less than market value, within two years prior to the firm's application for participation in the 8(a) program. A transfer of assets for "fair market value" that is documented as

such, would be excluded. Also excluded are transfers for ~ education, medical expenses, some other forms of essential support, and those transfers that are consistent with the customary recognition of special occasions such as birthdays, graduations, anniversaries, and retirements. The disadvantaged applicant must show proof of these reasons for asset transfer.

13. What percentage of ownership in the applicant firm must be owned by socially and economically disadvantaged individuals?

SBA requires that at least 51% of the applicant firm is unconditionally owned by socially and economically individuals.

14. Are there special ownership provisions for individuals who reside in a community property state or territory?

Yes. If only one spouse is claiming disadvantaged status, this spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws. For this reason, a transfer or relinquishment of interest by the nondisadvantaged spouse may be necessary.

15. Is ownership by a trust allowed?

8(a) regulations require that ownership in the firm by one or more disadvantaged individual(s) be direct ownership. Ownership by a trust, such as a living trust, may be considered the functional equivalent of direct ownership if the following conditions are met:

1. The trust is revocable;
2. The disadvantaged individual is the grantor of the trust;
3. The disadvantaged individual is a trustee of the trust; and,
4. The disadvantaged individual is the sole current beneficiary of the trust.

16. Can a disadvantaged individual or firm have ownership in more than one Participant?

Yes. However, one or more disadvantaged individuals determined to be disadvantaged for purposes of one Participant, their immediate family members, and the Participant itself, may not hold in aggregate, more than 20% equity in any single 8(a) firm.

17. Are there any ownership restrictions placed on nondisadvantaged individuals and firms

Yes. SBA places two general ownership restrictions on non-disadvantaged individuals and firms:

- A non-participant concern in the same or similar line of business may own up to 10% of an 8(a) firm in the developmental stage and up to 20% in an 8(a) firm in the transitional stage. Former 8(a) participants (except those that have been terminated from the 8(a) program) may own up to 20% in an 8(a) firm in the developmental stage and up to 30% in an 8(a) firm in the transitional stage.
- A nondisadvantaged individual, in aggregate with all immediate family members, or firm that is a general partner or stockholder with at least a 10% ownership interest in an 8(a) firm may simultaneously hold up to 10% ownership interest in any number of 8(a) firms in the developmental stage of program participation and up to 20% interest in any number of 8(a) firms in the transitional stage of program participation.

18. How does SBA view control of an applicant or 8(a) concern?

Control is not the same as ownership although both control and ownership may reside in the same person. Control includes both strategic policy setting and the day-to-day management and administration of business operations by disadvantaged individuals.

19. Does SBA require the disadvantaged individual to have the technical expertise-and hold the critical license in order to demonstrate that he or she controls and manages the applicant firm?

No. However, the disadvantaged individual must demonstrate that he or she has the ultimate managerial and supervisory control over those who possess the technical expertise or licensing. If the critical license is held by a nondisadvantaged individual who has an equity interest in the applicant firm, that nondisadvantaged individual may be found to control the firm.

20. How does SBA determine disadvantaged control of a corporate Board-of Directors-?

There are six situations where SBA may determine disadvantaged individuals control a Board of Directors:

1. If a single disadvantaged individual owns 100% of all issued and outstanding voting stock of an applicant firm, regardless of the composition of the Board of Directors.
2. If a single disadvantaged individual owns at least 51% of and issued and outstanding voting stock of the applicant firm and is a legally elected voting member of the Board of Directors and no super majority voting requirements exist for shareholders to approve corporate actions.
3. If a single disadvantaged individual owns at least 51% of all issued and outstanding voting stock of the applicant firm and is a legally elected voting member of the Board of Directors and owns at least the percentage of voting stock needed to overcome the super majority voting requirements that exist for shareholders to approve corporate actions.
4. If more than one disadvantaged individual owns at least 51% of all issued and outstanding voting stock of the applicant firm and all are legally elected voting members of the Board of

Directors and no super majority voting requirements exist for shareholders to approve corporate actions and the disadvantaged shareholders can demonstrate they have made enforceable arrangements to permit one of them to vote the stock of all as a block to nondisadvantaged shareholders' actions without holding a shareholder meeting.

- 5. If more than one disadvantaged individual owns at least 51% of all issued and outstanding voting stock of the applicant firm and all are legally elected voting members of the Board of Directors and in total all own at least the percentage of voting stock needed to overcome the super majority voting requirements which exist for shareholders to approve corporate actions and the disadvantaged individuals can demonstrate they have made enforceable arrangements to permit one of them to vote the stock of all as a block to nondisadvantaged shareholders' actions without holding a shareholder meeting.
6. If the disadvantaged individual(s) can control the formation of a quorum for the purpose of holding a board meeting and have a majority vote at board meetings either through actual number of voting directors or through weighted voting, where permitted by state law.

21. What is a super majority?

A super majority is the percentage of votes above a simple majority (51%) required to make decisions on behalf of the firm.

22. Are there restrictions placed on nondisadvantaged individuals in terms of their relationships with disadvantaged individuals and/or applicant firm?

Yes. Nondisadvantaged individuals may be involved in the ownership and management of an applicant firm, as stockholders, limited liability members, partners, directors, and/or officers. However, nondisadvantaged individuals may not:

- Exercise actual control or have the power to control the applicant firms;
- Be former employers or principals of former employers of disadvantaged individuals; and
- Receive higher compensation than disadvantaged individuals. The highest ranking officer may elect to take a lower salary than the nondisadvantaged individual only upon demonstrating that it helps the applicant firms.

23. What factors are considered by SBA in evaluating the potential for success requirement?

SBA will evaluate the following:

- the technical and managerial experience of the applicant firms managers;
- the firm's operating history;
- ability of the firms to access credit and capital;
- the firm's record of performance; and
- whether the applicant firms or individuals employed by the firm hold the requisite licenses if the firm is engaged in an industry requiring professional licensing.

24. Does SBA have a minimum length of time in business requirement?

Yes. The applicant firm must have been operational for at least two full years as evidenced by business income tax returns for each of the two previous tax years which show operating revenues in the primary industry in which the applicant firm is seeking 8(a) program certification.

25. Can a firm still apply for participation in the 8(a) BD Program if it has not been in business or two full years?

Yes. However, the firm must obtain a waiver of the two years in business requirement by meeting all of the following conditions:

- A. The individual or individuals upon whom eligibility is based must have substantial business management experience.
- B. The applicant firm must demonstrate the technical experience to carry out its business plan with a substantial likelihood for success.
- C. The applicant firm must have adequate capital to sustain its operations and carry out its business plan.
- D. The applicant firm must have a record of successful performance on contracts from governmental or non-governmental sources in its primary industry category.
- E. The applicant firm must have, or must be able to demonstrate that it has, the ability to timely obtain the personnel, facilities, equipment, and any other requirements needed to perform on contracts if it is admitted to the 8(a) program.

26. Can a firm be declined entry into the Program for reasons of character?

Yes. The regulations stipulate that the applicant concern and all its principals must have good character. Areas of concern for character include:

- Adverse information regarding possible criminal conduct by the applicant and its principals;
- Violations of SBA regulations;
- Debarred or suspended firms and individuals;
- Applicant firm and/or its principals lack business integrity as demonstrated by information related to an indictment or guilty plea, conviction, civil judgment or settlement;
- Principals of the firm are currently incarcerated, or on parole or probation; and
- Evidence that the firm knowingly submitted false information during the application process.

27. Are brokers eligible for the 8(a) BD Program?

No. Brokers are not eligible for the program. A broker is a concern that adds no material value to an item being supplied to a procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities. If the applicant firm is a broker, but does not meet this definition, the firm may be eligible for 8(a) program participation.

28. What happens if an applicant firm or any of its principals fail to pay significant financial obligations owed to the Federal government?

If an applicant firm or any of its principals fail to pay significant financial obligations owed to the Federal government, including unresolved tax liens and defaults on federal loans or other federally assisted financing, the applicant firm will be ineligible for 8(a) program participation.

29. Can the current 8(a) application still be used to apply for 8(a) program Participation?

Yes. Until the Office of Management and Budget (OMB) approves a new application, the old application should continue to be used by applicants.

The regional Division of Program Certification and Eligibility (DPCE) has 15 days to review the application for completeness. If the application is incomplete, the applicant will have 15 days to provide additional information. The application will then be resubmitted to the DPCE. If the DPCE determines the application is complete, a final decision regarding 8(a) BD Program eligibility will be made within 90 days of SBA's determination that the application is complete.

31. What if an application is declined?

Each program applicant has the right to request that SBA reconsider a declined application. During the reconsideration process, the applicant may submit additional or revised information. If an application is declined after reconsideration, a new application will be accepted twelve months from the date of the reconsideration decision.

In addition, if an applicant is declined solely on issues of social disadvantage, economic disadvantage, ownership and/or control, the declined applicant may appeal the decline decision to SBA's Office of Hearings and Appeals (OHA). OHA examines the decline decision to determine if it was arbitrary, capricious or contrary to law. No new or revised information is considered during the appeal process.

32. How long can a company participate in the 8(a) program?

Program participation is divided into two stages: the developmental stage and the transitional stage. The developmental stage is four years and the transitional stage is five years. The developmental stage is designed to help 8(a) certified firms overcome their economic disadvantage by providing business development assistance.

The transitional stage is designed to help participants overcome the remaining elements of economic disadvantage and to prepare participants for leaving the 8(a) program.

33. Are 8(a) firms reviewed by SBA annually for compliance with eligibility requirements?

Yes. As part of an annual review, each Participant firm must submit to the servicing district office the following:

- 1) A certification that it meets the 8(a) BD program eligibility requirements;
- 2) A certification that there have been no changed circumstances which could adversely affect the Participant's program eligibility;
- 3) Personal financial information for each disadvantaged owner,
- 4) A record of all payments, compensation, and distributions (including loans, advances, salaries, and dividends) made by the Participant to each of its owners, officers, directors, or to any person or entity affiliated with such individuals;
- 5) iRS Form 4506, Request for Copy or Transcript of Tax Form; and
- 6) Such other information that SBA may deem necessary.

When a Participant fails to provide documentation for annual review, SBA may initiate termination proceedings.

The term "terminate" is used to refer to a Participant's exit from the 8(a) BD Program prior to the expiration of the program term for good cause. Examples of good cause include, but are not limited to:

- 1) Submission of false information in the firm's 8(a) BD application, regardless of whether correct information would have caused the firm to be denied admission to the program, and regardless of whether correct information was given to SBA in accompanying documents or by other means.
- 2) Failure by the concern to maintain its eligibility for program participation.
- 3) Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by disadvantaged individuals.
- 4) Failure by the concern to obtain prior written approval from SBA for any changes in ownership or business structure, management, or control pursuant to 13 C.F.R. §§ 124.105 and 124.106.
- 5) Failure by the concern to disclose to SBA the extent to which non-disadvantaged persons or firms participate in the management of the Participant business concern.
- 6) Failure by the concern or one or more of its principals to maintain good character.
- 7) A pattern of failure to make required submissions or responses to SBA in a timely manner, including a failure to provide required financial statements, requested tax returns, reports, updated business plans, information requested by SBA's Office of Inspector General, or other requested information or data within 30 days of the date of the request.
- 8) Cessation of business operations by the concern. [13 CFR 124.303 (a)(8)]

35. What does it mean to "graduate" from the 8(a) BD Program?

The term "graduate" is used to refer to a Participant's exit from the 8(a) BD Program at the expiration of the Participant's term.

Section 8(a) Business Development Program Waiver of Minimum Period of Operation

The Administration shall provide that any requirement it establishes regarding the period of time a prospective Program Participant must be in operation may be waived and, a prospective Program Participant who otherwise meets the requirements of Section 8(a)(7)(A) of the Small Business Act, shall be considered to have demonstrated reasonable prospects for success, if -

- (1) The individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;
- (2) The prospective Program Participant has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success;
- (3) The prospective Program Participant has adequate capital to carry out its business plan;
- (4) The prospective Program Participant has a record of successful performance on contracts from governmental and non-governmental sources in the primary industry category in which the prospective Program Participant is seeking program certification; and,
- (5) The prospective Program Participant has, or can demonstrate its ability to timely obtain the personal facilities, equipment, and any other requirements needed to perform such contracts.

Preponderance of Evidence

How does SBA propose to define “preponderance” concerning the evidence that must be provided in order to establish social disadvantage due to membership in a non-designated group?

Generally, preponderance is evidence of a quality and quantity which leads the decision maker to objectively conclude that the existence or truth of the fact(s) asserted is more probable than not.

What evidence could an individual applicant who is not a designated group member, provide to show social disadvantage under such a preponderance of evidence test?

SBA evaluates a claim of individual social disadvantage based on all of the elements found in 13 CFR 124.103(c)(2). The new regulation changes the evidentiary standard, specifically the quantity and quality of evidence that is necessary to prove an individual case of social disadvantage. While the criteria remains basically the same, the weight of evidence showing disadvantage in total no longer needs to be “clear and convincing,” but rather just a preponderance.

Evidence of individual social disadvantage must include the following elements:

- I. At least one. objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged.
2. Personal experiences of social disadvantage stemming from the objective distinguishing feature or features set forth in the preceding paragraph. The experiences must have been in American society, not in other countries, and must have been substantial and chronic.
3. Negative impact on entry into or advancement in the business world because of the disadvantage. SBA considers any relevant evidence in assessing this element. In every case, however, SEA considers education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into, or advancing in the business world.

What types of evidence can be used to assist in meeting the burden of proof? Court or Administrative findings of discrimination.

Statements made under oath to an investigator or in a court or administrative Proceeding.

Affidavits or statements sworn under oath by an individual owner which have specific recurrent incidents of discrimination or a pattern of discrimination over a significant period of time. Applicant statements alone, without supporting or corroborating evidence will be given less weight than if corroborated.

Sworn affidavits or statements from independent third parties who do not have an interest in or close relationship to the owner, corroborating or supporting assertions made by the owner.

Statements by relatives or friends of the owner will have less weight than statements by independent third parties.

Documentary evidence which corroborates or supports assertions made by an owner regarding specific incidents or a pattern of discrimination. Such documentation could include such items as:

- Personnel records
- Payroll records
- Rejection letters on job applications
- Denials of credit applications
- Documents relating to rejected contract offers, i.e., bid abstracts, solicitations, etc.
- Contemporaneous records memorializing meetings, conversations, negotiations, telephone calls, etc.
- Documents setting forth company policy(ies) which are alleged to be Discriminatory.

Evidence which tends to show generalized patterns of discrimination against a non-designated group or statistical data showing that businesses owned by a specific non-designated group are disproportionately underrepresented in a particular industry may be used to augment an individual's case. Statistics and generalized patterns are not sufficient by themselves to establish a case of individual social disadvantage. However, an individual's statement of personal experiences in combination with the generalized evidence may be sufficient to demonstrate social disadvantage.

Must an individual who is not a member of a designated group show discrimination in education, employment and business history in order to show negative impact on entry into or advancement in the business world because of the disadvantage?

SBA will consider any relevant evidence in assessing this element. In every case however, SBA will consider the experiences of the individual, where applicable, in education, employment, and business history to see if the totality of the circumstances shows disadvantage in entering into or advancing in the business world.

Evidence relating to all three should be addressed, if applicable. Each applicable circumstance & should demonstrate how it has affected the individual's entrance into and advancement in the business world. The failure to establish disadvantage in any one or even two areas (i.e., education, employment, or business history) does not prevent an individual from meeting the negative impact requirement as long as the totality of the circumstances experienced by the individual demonstrates such disadvantage.

